

STATE OF SOUTH CAROLINA

(Caption of Case)

IN RE:

Happy Rabbit, LP on Behalf of,

Windridge Townhomes, Complainant,

v.

Alpine Utilities, Inc., Respondent

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2008 - 360 - S

(Please type or print)

Submitted by: Richard L. WhittSC Bar Number: 62895Address: Austin & Rogers, P.A.Telephone: 803-251-7442508 Hampton Street, Suite 300Fax: 803-252-3679Columbia, South Carolina 29201Other: 803-256-4000Email: rlwhitt@alrlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously

Other: This Motion should be scheduled to be heard, at the commencement of the hearing to be scheduled in this Docket.

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit of Publication	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certification of Mailing	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Return	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2008-360-S

IN RE:)
Happy Rabbit, LP on Behalf of,)
Windridge Townhomes,)
)
Complainant,)
v.)
)
Alpine Utilities, Inc.,)
Respondent.)
_____)

**COMPLAINANT'S
MOTION TO
CONFORM TO PROOF**

TO: Respondent Alpine Utilities, Inc., (hereinafter, "Respondent Alpine" or "Respondent") and its attorney of record, Benjamin P. Mustian.

INTRODUCTION

Happy Rabbit, a South Carolina Limited Partnership, on behalf of Windridge Townhomes, (hereinafter, "Happy Rabbit") filed a Complaint in this Docket on September 16, 2008. Thereafter, extensive discovery has been completed by the parties. As a result of discovery, served by Complainant Happy Rabbit, and answers thereto by Alpine Utilities, Inc., (hereinafter, "Alpine"), Alpine has admitted that actual notice of Section 27-33-50, S.C Code of Laws Ann. (1976, as amended), was provided to Alpine by Happy Rabbit, on or about October 6, 2003. Alpine thereafter willfully overcharged Happy Rabbit, despite being placed on notice of Section 27-33-50, and despite Happy Rabbit's request that Alpine establish sewer utility accounts with each tenant of Happy Rabbit, as required by Section 27-33-50. Happy Rabbit's Motion to Conform follows:

MOTION TO CONFROM TO PROOF

Happy Rabbit's First Set of Request for Admissions to Alpine contained the following request for admission:

"6. Admit that a General Partner of Complainant contacted Respondent to make Respondent aware of the requirements of § 27-33-50 of the South Carolina Code Ann., (976, as amended)."

Alpine's Response:

"Alpine admits that its records indicate that James C. Cook, an owner of Windridge Townhomes, contacted Alpine on or about October 6, 2003 regarding Section 27-33-50. Upon information and belief, the limited partnership known as "Happy Rabbit" was not then in existence and, therefore, Mr. Cook did not then exist as its General Partner. Alpine denies the remainder of this Request to Admit and der ies any assertion in this Request to Admit inconsistent with this admission."

Based on Alpine's admission, it is appropriate that Happy Rabbit's Complaint be conformed to the proof of this case, namely that Alpine has admitted that it was aware of Section 27-33-50, (and the requirements thereof). (Although Alpine has admitted that it received actual notice of the requirements of Section 27-33-50 from a representative of Happy Rabbit, Alpine was, of course, charged with the responsibility to operate its utility in full compliance with all of the laws of the State of South Carolina, without notice from a customer.)

Also based on Alpine's admission, Happy Rabbit moves that the Public Service Commission of South Carolina, (hereinafter, "Commission") should find that Alpine willfully overcharged Happy Rabbit, in contravention of Section 27-33-50 and with Alpine's admitted full knowledge of the statute. Accordingly, and pursuant to R. 103-533 (3), Happy Rabbit is entitled to conform its Complaint to Proof and to recover, from Alpine's admitted date of knowledge of Section 27-33-50, October 6, 2003, all monies charged by Alpine and paid by Happy Rabbit, plus interest, from October 6, 2003 until the date of this Commission's Order.

CONCLUSION

Based on the files of this Docket, the foregoing and the admission of Alpine, Happy Rabbit's Complaint should be Conformed to Proof and Happy Rabbit should be allowed to seek recovery of all monies paid to Alpine by Happy Rabbit, since October 6, 2003, plus interest thereon, as provided by the regulations of this Commission.

AUSTIN & ROGERS, PA

_____/s/_____
Richard L. Whitt
508 Hampton Street, Suite 300
Columbia, South Carolina 29201
(803) 251-7442
Attorney for Complainant

Columbia, South Carolina

RLW/jjy
March 11, 2009

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2008-360-S

IN RE:

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Windridge Townhomes,

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v.

Alpine Utilities, Inc.,
Respondent

CERTIFICATE OF SERVICE

I, Jessica Yun, an employee of Austin & Rogers, P.A., certify that I mailed a copy of Happy Rabbit's Motion to Conform to Proof in the above referenced matter as indicated below, via U.S. Mails as addressed below, with proper postage affixed thereto, or e-mail on March 11, 2009.

Attorney Benjamin P. Mustian
P.O. Box 8416
Columbia S.C., 29202-8416
Via U.S. Mail

Nanette S. Edwards, Esquire
Via e-mail

Austin & Rogers, P.A.

/S/
Jessica Yun

Columbia, South Carolina
March 11, 2009